



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154878

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 03, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency correctly discontinued petitioner's FS effective November 1, 2013 because she is a drug felon and failed a drug test.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Rhonda Kramer

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On October 11, 2013 petitioner completed an application for FS and confirmed therein that she was convicted of a federal drug felony within the past 5 years.

3. The petitioner did submit to the drug test required under FS policy and tested positive for amphetamines, benzodiazepines, and methadone on October 15, 2013. See Exhibit 2.
4. On November 14, 2013 the agency issued two Notices to the petitioner, informing the petitioner that her FS would be discontinued effective November 13, 2013 and that she could not get FS for 12 months thereafter because she had failed a drug test. See Exhibits 3 and 4.

DISCUSSION

For FS eligibility purposes, a drug felon is a person who is convicted of a felony in a state or federal court involving the possession, use or distribution of a controlled substance within the last 5 years. See *FS Handbook (FSH)* §3.19.1 and 7 CFR §273.11(m). Convicted drug felons must have a negative drug test result to become or remain eligible for FS. See *FSH* §§3.19.1 and 3.19.1.2. According to policy:

Applicants who meet the definition of a drug felon and agree to take a drug test will be tentatively approved until a drug test is taken. If the individual passes this test, s/he remains eligible. If the applicant refuses to take a drug test, s/he will be denied indefinitely until s/he agrees to take a drug test.

If the drug test result is positive, the individual is ineligible for 12 months from the next possible payment month.

FSH §3.19.1.1 (emphasis added).

In this case, the petitioner does not dispute that she is a convicted drug felon or that she failed the test. Rather, she argues that she had a prescription for the amphetamines, benzodiazepines, and methadone. Petitioner presented pharmacy printouts showing her prescriptions. For the methadone in particular, the prescription shows that it was filled in 2005. Her testimony was that from approximately 2008-2013 she was incarcerated. Thus, when she was released and applied for FS in October 2013, she went home to where her mother was keeping her belongings, and she resumed taking the prescribed methadone which she still had amongst her belongings. The problem is that the controlled substance methadone was not authorized in 2013 for her to take, she was simply self-medicating. She admitted that she did not have any controlled substance/methadone during her incarceration for the 5 years preceding the application for FS and the drug test. Thus, taking the methadone was her own choice and not taken under the direction of a physician.

I do not have any power to change the result based on any fairness argument, as it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I add, for petitioner's benefit that in order to regain eligibility for FS after 12 months she must reapply and submit to another drug test. If the second drug test is negative, she may be eligible for FS as of the first of the month following the month in which she agrees to take the test. If the second test results are positive, she is ineligible for the FS program for an additional 12 months. As with other sanctions that end, the individual must re-request FS. She will not automatically be eligible when the sanction period ends. See *FSH* §3.19.1.3.

Having no evidence to the contrary, I must find the agency acted correctly here.

CONCLUSIONS OF LAW

The agency properly determined petitioner's FS benefits should end effective November 1, 2013 because she is a drug felon and failed a drug test.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of April, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 4, 2014.

Racine County Department of Human Services
Division of Health Care Access and Accountability